

Charles C Vaughan Jr.
27188 Mirage Lane
Daphne AL 36526

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

FILED OCT 7 '10 AM 10:48 USDCAL

Charles C Vaughan Jr.

Plaintiff,

vs.

Bank Of America, NA

Defendant

Case# CV-2010-453 - KD-N

**MOTION FOR RULE 11
SANCTIONS**

Date: October 07, 2010

PLAINTIFF'S MEMORANDUM IN

SUPPORT OF MOTION FOR RULE 11 SANCTIONS

Plaintiff asks the court to impose sanctions against Kenneth S. Steely Defendant, hereinafter referred to counsel for Defendant, for filing Defendants Answer in violation of Federal Rule of Civil Procedure 11(b).

A. Introduction

1. Plaintiff is Charles C Vaughan defendant is Bank Of America, NA.
2. Plaintiff sued defendant for numerous violations including but not limited to violations of the Truth In ending Act, The Real Estate Settlement Procedures Act, The Home equity Protection Act, Fraud, Common law Fraud, Breach of Fiduciary duties, .Et Al.
3. On September 16, 2010 counsel for Defendant filed defendants answer.

B. Argument

5. The court may impose sanctions on a party, an attorney, or a law firm, for presenting a pleading, written motion, or other paper for an improper purpose, such as to harass or cause
RESPONSE TO RULE 12 MOTION & MOTIONS FOR SANCTIONS

unnecessary delay or expense. Fed. R. Civ. P. 11(b)(1), (c)(1). Also, the court may impose sanctions on a party, an attorney, or a law firm, for presenting a pleading, written motion, or other paper that includes any of the following: (1) claims, defenses, or contentions not warranted by existing law or by a good-faith argument for extending, modifying, or reversing existing law or for establishing new law; (2) allegations that do not have, or are unlikely to have after a reasonable investigation, evidentiary support; or (3) denials unwarranted by the evidence. Fed. R. Civ. P. 11(b)(2)-(4), (c)(1).

6. counsel for Defendant's filing of "Defendants Answer" violated Rule 11 because counsel for Defendant filed the document for an improper purpose, such as to harass, cause an unnecessary delay, or needlessly increase the cost of litigation. Fed. R. Civ. P. 11(b)(1); *Mercury Air Group, Inc. v. Mansour*, 237 F.3d, 542, 548 (5th Cir. 2001). Specifically, The answer or affirmative defenses make bald allegations that claims are stated improperly, claims are time barred due to limitation on statutory procedure, and that the court lacks jurisdiction over the Defendant. However, the Defendant failed to offer any further information as to HOW his defenses are justified, or how Plaintiff specifically failed to meet Federal Rules of Civil Procedure. This is seemingly a waste of time, and intentionally done to cause unnecessary delay, and cost to the Plaintiff.

7. Before imposing sanctions, the court should determine whether the party or the attorney made a reasonable inquiry into the facts or the law before signing and presenting the document. *See* Fed. R. Civ. P. 11(b); *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1364-65 (9th Cir. 1990). The court should impose sanctions against counsel for Defendant because he did not make a reasonable inquiry into the facts or law before filing the answer He offered no court cases, information, rules or procedures as to how, why, or what specifically failed to meet the criteria he uses as a defense.

8. The court should impose the following sanctions: Monetary Sanctions, and Striking Of Pleadings of the defendant. The requested sanctions are sufficient to deter repetition of the sanctionable conduct. Fed. R. Civ. P. 11(c)(4); *Fries v. Helsper*, 146 F.3d 452, 458-59 (7th Cir. 1998). Plaintiffs suit makes very strong claims and allegations, which can be proved through discovery, and demands that his complaint be taken seriously. Counsel for Defendant failed to address the suit with specificity, and by the court allowing sanctions in this case, the counsel will take the case with serious intention.

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C. Conclusion

267 9. Defendants answer failed to address with specificity, as to why the defenses counsel for
268 Defendant used, were valid. They are wasting the time of the Plaintiff and the Court, and are
269 shadowing the seriousness of the case at hand. For these reasons, Plaintiff asks the court to
270 impose sanctions of a monetary amount to be determined by the court, and a Striking of
271 Defendants answer in its entirety.

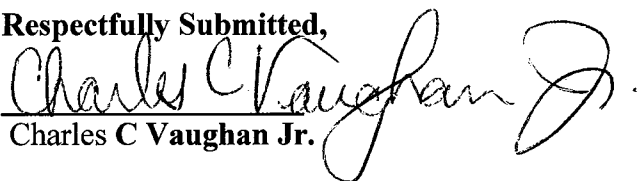
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273 **Respectfully Submitted,**

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Charles C Vaughan Jr.

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VERIFICATION

I, Charles C Vaughan Jr, do swear and affirm that all statements made herein are true and accurate, in all respects, to the best of my knowledge.

Charles Vaughan Jr.
27188 Mirage Lane
Daphne, AL 36526

SWORN TO AND SUBSCRIBED BEFORE ME, Rosalee Wall Smith by Charles Vaughan, Jr.
_____, on the 7 day of October 2010, which witnesses my hand and seal of office.

Rosalee Wall Smith

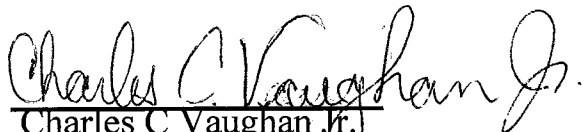
NOTARY PUBLIC IN AND FOR

THE STATE OF ALABAMA

Exp 08/16/2014

CERTIFICATE OF SERVICE

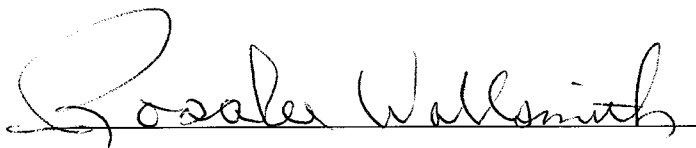
I, Charles C Vaughan Jr, do swear and affirm that I have served a signed copy of this Response to Rule 12 motion & Motion For Sanctions to any and all defendants by way of U.S.P.S. Certified mail # 7009 1410 0000 6796 8831 and return receipt, regular mail. Date of October 07, 2010


Charles C Vaughan Jr.
27188 Mirage Lane
Daphne AL 36526

The Person above, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document and acknowledged to me that he/she executed the same in his authorized capacity and that by his signature on this instrument who is the person who executed this instrument.

I certify under PENALTY OF PERJURY under the laws of this State that the foregoing paragraph is true and correct.

Witness my hand and official seal.



NOTARY PUBLIC IN AND FOR
THE STATE OF ALABAMA

Notary Seal

Exp 08/16/2014

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE OF LOAN: 1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FmHA 3. <input checked="" type="checkbox"/> CONV. UNINS. 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS. 6. FILE NUMBER: 254/16022 7. LOAN NUMBER: 47342871 8. MORTGAGE INS CASE NUMBER:	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "IPOC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.			
D. NAME AND ADDRESS OF BORROWER: Charles C. Vaughan, Jr. 27188 Mirage Lane Daphne, AL 36526		E. NAME AND ADDRESS OF SELLER: American's Wholesale Lender 100 Concourse Parkway, Suite 100 Birmingham, AL 35244	
G. PROPERTY LOCATION: 27188 Mirage Lane Daphne, AL 36526 Baldwin County, Alabama		H. SETTLEMENT AGENT: 03-0498055 Pierce Leedyard, PC PLACE OF SETTLEMENT 3801 Airport Boulevard Mobile, AL 36608	
		I. SETTLEMENT DATE: January 21, 2004 Disburse: 01/26/04	
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price		401. Contract Sales Price	
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (Line 1400) 6,573.12		403.	
104. Payoff first mortgage to Small Business Management 200,345.27		404.	
105.		405.	
Adjustments For Items Paid By Seller in advance		Adjustments For Items Paid By Seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER 206,918.39		420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Excess Deposit (See Instructions)	
202. Principal Amount of New Loan(s) 206,502.00		502. Settlement Charges to Seller (Line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first Mortgage	
205. Credit Appr/C.R./Broker 2,289.64		505. Payoff of second Mortgage	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller		Adjustments For Items Unpaid By Seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER 208,791.64		520. TOTAL REDUCTION AMOUNT DUE SELLER	
300. CASH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross Amount Due From Borrower (Line 120) 206,918.39		601. Gross Amount Due To Seller (Line 420)	
302. Less Amount Paid By/For Borrower (Line 220) (208,791.64)		602. Less Reductions Due Seller (Line 520)	
303. CASH (FROM) (X TO) BORROWER 1,873.25		603. CASH (TO) (FROM) SELLER 0.00	

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein. I HAVE CAREFULLY REVIEWED THE HUD-1 SETTLEMENT STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS A TRUE AND ACCURATE STATEMENT OF ALL RECEIPTS AND DISBURSEMENTS MADE ON MY ACCOUNT OR BY ME IN THIS TRANSACTION. I FURTHER CERTIFY THAT I HAVE RECEIVED A COPY OF THE HUD-1 SETTLEMENT STATEMENT.

Borrower

Charles C. Vaughan, Jr.
 Charles C. Vaughan, Jr.

Seller

TO THE BEST OF MY KNOWLEDGE, THE HUD-1 SETTLEMENT STATEMENT WHICH I HAVE PREPARED IS A TRUE AND ACCURATE ACCOUNT OF THE FUNDS WHICH WERE RECEIVED AND HAVE BEEN OR WILL BE DISBURSED BY THE UNDERSIGNED AS PART OF THE SETTLEMENT OF THIS TRANSACTION.

Pierce Leedyard, PC
 Pierce Leedyard, PC
 Settlement Agent

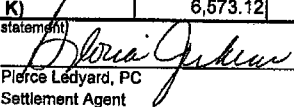
WARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON CONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE: TITLE 18 U.S. CODE SECTION 1001 & SECTION 1010.

L. SETTLEMENT CHARGES

700. TOTAL COMMISSION Based on Price		\$	@	%		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
Division of Commission (line 700) as Follows:							
701.	\$	to					
702.	\$	to					
703. Commission Paid at Settlement							
704.		to					
800. ITEMS PAYABLE IN CONNECTION WITH LOAN							
801.	Loan Origination Fee	0.9635 %	to	Magnolia Mortgage Company, LLC		1,989.64	
802.	Loan Discount	%	to				
803.	Appraisal Fee		to	Magnolia Mortgage Company, LLC		300.00	
804.	Credit Report		to	Magnolia Mortgage Company, LLC		50.00	
805.	Processing Fee		to	Magnolia Mortgage Company, LLC		46.00	
806.	Re-inspection Fee		to	Magnolia Mortgage Company, LLC		75.00	
807.	Courier Fee		to	Magnolia Mortgage Company, LLC		50.00	
808.	Flood Check		to	Landsafe Flood		25.00	
809.	Tax Service Fee		to	Countrywide Tax Service		60.00	
810.	Document Prep/Underwriting		to	American's Wholesale Lender	225/300	525.00	
811.	Broker Premium		to	Magnolia Mortgage Company, LLC	POC \$1,806.89 L		
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE							
901.	Interest From	01/26/04 to 02/01/04	@	\$ 32.530000/day (6 days 5.7500%)		195.18	
902.	Mortgage Insurance Premium	months					
903.	Hazard Insurance Premium	1.0 years	to	Owners Insurance Company	6101 Anacapi Blvd.	1,720.20	
904.	2003 Property Taxes	1.0 years	to	Baldwin County Tax Collector		225.59	
905.							
1000. RESERVES DEPOSITED WITH LENDER							
1001.	Hazard Insurance	3.000 months	@	\$ 143.35 per month		430.05	
1002.	Mortgage Insurance	months	@	\$ per month			
1003.	City/town taxes	months	@	\$ per month			
1004.	County taxes	5.000 months	@	\$ 18.20 per month		91.00	
1005.	Assessments	months	@	\$ per month			
1006.	2003 Property Taxes	months	@	\$ per month			
1007.		months	@	\$ per month			
1008.	Aggregate Adjustment	months	@	\$ per month		-36.44	
1100. TITLE CHARGES							
1101.	Settlement or Closing Fee		to	Pierce Ledyard, PC		200.00	
1102.	Abstract or Title Search		to				
1103.	Title Examination		to				
1104.	Title Insurance Binder		to				
1105.	Document Preparation		to	Pierce Ledyard, PC		80.00	
1106.	Overnight Courier Fees		to	Pierce Ledyard, PC		15.00	
1107.	Attorney's Fees		to	Pierce Ledyard, PC			
(Includes above item numbers:)							
1108.	Title Insurance		to	The Guarantee Title Company, L.L.C.	04-109	150.00	
(Includes above item numbers:)							
1109.	Lender's Coverage	\$		206,502.00			
1110.	Owner's Coverage	\$					
1111.							
1112.							
1113.							
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES							
1201.	Recording Fees: Deed \$		Mortgage \$	46.00;	Releases \$	26.00	72.00
1202.	City/County Tax/Stamp		Deed		Mortgage		
1203.	State Tax/Stamp		Revenue Stamps		Mortgage	309.90	309.90
1204.							
1205.							
1300. ADDITIONAL SETTLEMENT CHARGES							
1301.	Survey		to				
1302.	Pest Inspection		to				
1303.							
1304.							
1305.							
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)						6,573.12	

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this two page statement

Certified to be a true copy.


 Pierce Ledyard, PC
 Settlement Agent

Prepared by: MELODY TRUCKS

TRUTH IN LENDING DISCLOSURE STATEMENT
(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

LENDER: AMERICA'S WHOLESALE LENDER

☐ Preliminary ☒ Final
DATE 01/21/2004

4500 Park Granada
Calabasas, CA 91302

BORROWERS: CHARLES C VAUGHAN JR

LOAN 047342871

CASE NO.

Type of Loan CONV UNINSURED
Conf Fixed 30 Fast &
Easy Loan

ADDRESS 27188 MIRAGE LANE
CITY STATE / ZIP DAPHNE, AL 36526
PROPERTY 27188 MIRAGE LANE
DAPHNE, AL 36526

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
5.901 %	\$ 230,670.53	\$ 203,161.18	\$ 433,831.71

PAYMENT SCHEDULE:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	WHEN PAYMENTS ARE DUE
359	1,205.09	MONTHLY BEGINNING 03/01/2004

DEMAND FEATURE: ☒ This loan does not have a Demand Feature. ☐ This loan has a Demand Feature as follows:

VARIABLE RATE FEATURE:

☐ This loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.

SECURITY: You are giving a security interest in the property located at:
27188 MIRAGE LANE, DAPHNE, AL 36526

ASSUMPTION: Someone buying this property ☒ cannot assume the remaining balance due under original mortgage terms.
☐ may assume, subject to lender's conditions, the remaining balance due under original mortgage terms.

PROPERTY INSURANCE: Hazard insurance, including flood insurance if the property is in a Special Flood Hazard Area, is required as a condition of this loan. You may obtain the insurance coverage from any insurance company acceptable to the lender. Complete details concerning insurance requirements will be provided prior to loan closing.

LATE CHARGES: If your payment is more than 15 days late, you will be charged a late charge of 5.000 % of the overdue payment

PREPAYMENT: If you pay off your loan early, you

☐ may ☒ will not have to pay a penalty.
☐ may ☒ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information regarding non-payment, default, required repayment in full before scheduled date, and prepayment refunds and penalties.
e means estimate

I/We hereby acknowledge reading and receiving a complete copy of this disclosure.

Charles C. Vaughan Jr 1-21-04
BORROWER/DATE

BORROWER/DATE

CHARLES C VAUGHAN JR

BORROWER/DATE

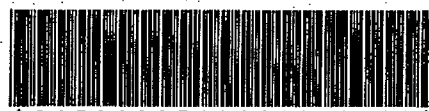
BORROWER/DATE

FHA/VA/CONV
Truth In Lending Disclosure
2C298-US (01/03)(d)

Page 1 of 2



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